D.P.U./D.T.E. 97-88/97-18 [Phase II]

Investigation by the Department of Telecommunications and Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company, d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the rate policy for operator service providers.

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- INTRODUCTION

On April 17, 1998, the Department of Telecommunications and Energy ("Department") issued its decision in Entry and Exit Barriers and OSP Rate Cap, D.P.U./D.T.E. 97-88/97-18 [Phase II] ("Order"), ordering the removal of barriers to entry and exit of the payphone marketplace and modifying the existing operator service provider ("OSP") rate cap. In the Order, the Department (1) required registered payphone providers to disclose their rates for local coin calls, (2) classified OSPs as non-dominant carriers authorized to charge market-based rates, and (3) required OSPs to notify customers orally of the long-distance rates those customers would be charged. Order at 11-12.

On December 12, 1997, the Department issued a Procedural Notice requesting comments concerning Verizon - Massachusetts' ("Verizon") tariff filing to implement Public Access Smart-Pay Line ("PASL") Service. In particular, the Department requested comment on "whether [Verizon]'s PAL and PASL services comply with FCC requirements" as set forth In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 12 FCC Rcd 20, 997, 20, 998 (para. 2)(Com. Car. Bur. 1997)(Procedural Notice at 2). The New England Public Communications Council ("NEPCC") and Verizon filed comments on January 16, 1998, and January 26, 1998, respectively, at which time the Department took the comments filed by the parties under advisement.

On December 7, 1998, NEPCC, pursuant to 220 C.M.R. §1.104 (5), (7) and (8), petitioned the Department to reopen the record and conduct evidentiary hearings ("NEPCC Motion to Reopen") in D.P.U./D.T.E. 97-88/97-18 (Phase II) for the purpose of permitting the development and consideration of additional evidence on the compliance of Verizon existing tariffed rates for Public Access Line ("PAL") service with the Federal Communications Commission's ("FCC") requirements for state payphone tariffs, including the "new services test."[(1)] NEPCC contends that since Verizon's January 26, 1998 filing, decisions in West Virginia, Delaware, and Pennsylvania addressing the "new services test" have been handed down and their content and deliberations are directly relevant to the issues pending before the Department (NEPCC Motion to Reopen at 6).

On December 23, 1998, Verizon submitted its opposition to NEPCC's Motion to Reopen, citing the provision of ample documentation to the Department through both its original filing and its January 26, 1998, comments supporting the tariffed rates for PAL service.

NEPCC filed its reply on February 8, 1999. The Department granted NEPCC's Motion to Reopen the Record on May 14, 1999. An evidentiary hearing was held at the Department on September 13, 1999. The evidentiary record consists of 180 exhibits and eight record requests. The parties filed briefs on October 12, 1999 and reply briefs on

October 29, 1999.[(2)]

- STANDARD OF REVIEW

Section 276(a) of the Telecommunications Act of 1996 ("Act") provides that "any Bell operating company that provides payphone service (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations; and (2) shall not

prefer or discriminate in favor of its payphone service." 47 U.S.C. §276(a).

Section 276(b) of the Act directs the FCC to prescribe regulations "[i]n order to promote competition among payphone service providers ("PSPs") and promote the widespread deployment of payphone services to the benefit of the general public." In In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20, 541 (1996) ("Report and Order"), 11 FCC Rcd 21, 233 (1996) ("Order on Consideration"), In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 12 FCC Rcd 20, 997 (Com. Car. Bur. 1997)("First Bureau Clarification Order"), and 12 FCC Rcd 21, 370 (Com. Car. Bur. 1997) ("Second Bureau Clarification Order") (collectively referred to as the Payphone Orders), the FCC unbundled payphone services from payphone equipment and required that local exchange carriers ("LECs") provide PSPs with basic payphone lines that can be used for "smart" or "dumb" payphones on an unbundled basis. Report and Order, at ¶ 146; Order on Reconsideration, FCC 96-439, Released November 8, 1996 at ¶¶ 162-163 ("Reconsideration Order"). The FCC stated that "tariffs for these LEC payphone services must be: (1) cost-based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) non-discriminatory." Reconsideration Order at ¶ 163. These three enumerated components, coupled with the requirement that the tariffs for payphone service be consistent and non-discriminatory regarding the FCC's Amendment of Section 64.702 of the Commission's Rules and Regulations' ("Computer III") tariffing guidelines create what has been referred to by the FCC and the parties as "the new services test." See First Bureau Clarification Order at ¶ 2. The FCC further ordered that "[s]tates must apply these requirements and the Computer III guidelines for tariffing such intrastate services." Reconsideration Order at ¶ 163.

III. POSITIONS OF THE PARTIES

A. Compliance with Section 276 of the Act and FCC's New Services Test

1. NEPCC

NEPCC claims that Verizon's PAL rates are not cost-based within the meaning of the FCC standard (NEPCC Initial Brief at 10). NEPCC argues that the current PAL rates were originally established using rate-of-return regulation, a criterion that has little to do with the forward-looking economic costs of providing the PAL service (id. at 10-11).

NEPCC notes that the Delaware Public Service Commission, faced with a similar situation, ordered Bell Atlantic-Delaware to lower its rates because it found that the business dial tone rate that applied to payphone lines was established as a residual rather than a cost-based rate (id. at 11). Accordingly, NEPCC argues that Verizon's PAL rates should be treated similarly because the rates are set on the same residual basis as that of Bell Atlantic-Delaware (id.).

NEPCC indicates that the Department did not use the new services test in reviewing and approving the present PAL rate structure. NEPCC states that although Verizon has the burden to demonstrate that each PAL service element recovers the direct cost and a reasonable portion of overhead costs, it chose not to present a PAL-specific cost study. Rather, NEPCC contends that Verizon relied on the unbundled network element ("UNE") results determined in the Department's Consolidated Arbitrations for its direct costs, and on the direct costs-to-rate ratio that the FCC previously approved or allowed to go into effect to justify its overhead cost (id. at 12-13). NEPCC argues that the link rate should be adjusted to reflect PAL-specific link characteristics, especially since PAL subscribers generally place their phones at business locations using links with business line characteristics and that UNE rates are based on statewide average combining both business and residential customers (id. at 14). NEPCC indicates that applying this calculation in 42 states has shown that the cost of a link with business characteristics is roughly 80 percent the cost of the link developed with a mixture of residence and business characteristics (id. at 15). Accordingly, NEPCC wants Verizon to adjust its statewide average link cost to reflect that difference (id.). NEPCC states that BellSouth, GTE and United have made this type of adjustment to their UNE rates

(id. at 15-16).

Moreover, NEPCC argues that Verizon had made no demonstration of the reasonableness of the cost-to-rate ratio analysis of its overhead cost (id. at 17). NEPCC argues that Verizon's reliance on the FCC's previously allowed cost-to-rate ratio is unfounded because: (1) allowing a tariff to take effect does not constitute the FCC's endorsement or sanction of the appropriateness thereof; (2) the FCC never approved such an approach in its new services test; and (3) the fact that a cost-to-rate ratio may fall within a range approved for one set of services is irrelevant with respect to a different set of services (id. at 17-18). NEPCC states that in In the Matter of Local Exchange Carriers' Payphone Functions and Features, 12 FCC Rcd 17, (1997)("Payphone Features Order"), the FCC specifically stated that its determination of overhead loadings for Verizon's provision of payphone features and functions will not necessarily be determinative in evaluating overhead loadings for other services (id. at 18). Absent any specific analysis provided by Verizon, NEPCC recommends that Verizon apply overhead loadings already found by the Department to be reasonable in D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, collectively referred to as the Consolidated Arbitration proceedings (id. at 22).[(3)]

Furthermore, NEPCC argues that, contrary to Verizon's claim, the FCC payphone standard also applies to local usage (id.). NEPCC states that local usage is not an optional feature or function and further contends that a payphone cannot make use of a payphone line unless it also pays usage (id.). According to NEPCC, Verizon is trying to justify its high markup for its monthly local usage charges by arguing that local usage is not a payphone-specific feature or function, therefore negating the applicability of FCC requirements in this regard (id. at 22-23). NEPCC contends that similar arguments made by Verizon in Pennsylvania and Maryland were rejected (id. at 23-24). Moreover, NEPCC claims that the FCC's policy statement, in a letter dated October 5, 1999 from the FCC's Common Carrier Bureau to the Deputy Attorney General of New Jersey, confirms that the payphone standards apply to the local usage component of PAL services (RR-DTE-3, October 7, 1999 Supplement). According to NEPCC, the FCC indicated that it "drew no distinctions based on rate structure; nor did it make any other exceptions to the cost requirements. Thus, any payphone service rate, flat or usage based, must be justified by cost support materials as prescribed in 47 C.F.R. § 61.49(g), and must satisfy the price caps new services test" (id. at 25-26).

NEPCC also argues that Verizon's failure to establish cost-based rates has undermined the non-discriminatory requirement of the FCC's four-part standard (id. at 30-31). Accordingly, NEPCC recommends that the Department require Verizon to lower its monthly PAL line rate to $16.71 and local usage rate to $0.0158. Furthermore, NEPCC requests that the Department retroactively apply this rate effective April 15, 1997, with the appropriate refunds to be made within 30 days of the date of this order (id. at 32).

2. Verizon

Verizon argues that it presented substantial evidence to demonstrate that its existing tariffed rates for PAL, PASL and unbundled payphone features comply with the FCC's requirements implementing § 276 (Verizon Initial Brief at 4). Verizon claims that the FCC's new services test established in Computer III requires that rates be based on the direct cost of providing the new service as a price floor and recover a reasonable level of contribution toward the recovery of joint and common fixed costs (id. at 5). Verizon argues that the FCC declined to require that the total element long-run incremental cost ("TELRIC") pricing regime of §§ 251 and 252 of the Act apply to § 276 retail payphone services because payphone service providers are not telecommunications carriers (id.). Verizon argues that, in applying its new services test, the FCC did not quantify a reasonable level of overhead costs or require a uniform or specific contribution level in establishing rates for basic payphone services (id. at 6). Verizon indicates that the FCC has previously approved rates ranging from two to fifty times their direct costs, greatly exceeding Verizon's rates for payphone services in Massachusetts and falling between 1.30 and 1.73 times the direct costs for PAL and PASL services, respectively (id.).

Moreover, Verizon claims that the issue of whether PAL service should be set at business rates was previously litigated, resulting in a Department determination that PAL lines are business exchange lines and that the cost of services provided to payphone service providers are the same as the costs to serve other business customers (id. at 7-8, citing D.P.U. 89-300, D.P.U. 91-30, D.P.U. 92-100, and D.P.U. 93-125 (collectively "NYNEX Transition Filings")). Verizon contends that other state regulatory commissions, such as the Michigan and Colorado Commissions, have adopted the same rates for a payphone line and business line in proceedings established to investigate compliance with § 276 and related FCC payphone orders implementing the Act (id. at 8). Verizon finds fault with NEPCC's claim that the cost of providing loops to payphone service providers is less than for other customers because it is not supported by studies or cost data and, moreover, amounts to cost de-averaging based on customer classification (id. at 10).[(4)] Verizon argues that even if one accepts NEPCC's argument and adjusts the payphone loop costs by 20 percent, resulting in a reduction of $2.42 per PAL, no change in payphone rates would be required under the FCC's new services test because the existing payphone rates would be well within the range determined by the FCC as a reasonable level of contribution or overhead for payphone services (id. at 11). Moreover, Verizon contends that its cost-to-rate ratios for payphone services are within the range approved by the FCC on previous filing (id. at 13). Verizon claims that NEPCC has failed to demonstrate why there should be a departure from established FCC precedent in the Department's consideration of PAL rates in this proceeding (id.).

Furthermore, Verizon argues that the local usage in this tariff is not payphone-specific and, therefore, is not subject to the payphone orders implementing the Act (id. at 19). According to Verizon, the FCC made it clear that the unbundled features to be tariffed are payphone-specific, network-based features and functions such as call-blocking, coin supervision, signaling and rating, originating line number screening and IDDD-blocking (id. at 19-22). Verizon argues that none of the FCC's payphone orders indicate that the FCC intended for usage to be included as a payphone line or an unbundled payphone feature subject to the FCC's new services pricing requirements (id. at 20). Contrary to NEPCC's claim, Verizon asserts that the letter from the FCC's Common Carrier Bureau staff is consistent with the Company's reading of the FCC's payphone orders (id. at 22). According to Verizon, the FCC drew no distinctions based on rate structure, nor made any exceptions to the cost requirements that any payphone service rate, flat or usage based, must satisfy the price caps new services test. The FCC does determine, however, whether a service was payphone-specific and subjects only those that are to the new services test scrutiny (id.). Verizon states that if it had chosen to offer a special rate plan for payphone services or had structured its usage prices differently for payphones as opposed to other services, then those services would be payphone-specific and the FCC's special rules would apply (id.). However, according to Verizon, it did not do this, and as a result, its usage charges are not payphone-specific and thus, not subject to the new services test (id.). Verizon indicates that, even if usage were included, the margin of local usage over direct costs does not show an unreasonable level of contribution or overhead, as compared with FCC-approved filings, which range between 2.0 and 4.8 times the direct cost (id.). Verizon notes that the direct cost of the usage component of flat-rated PAL is $7.57 and the effective rate is $26.77, producing a rate that is 3.5 times the direct cost, which is well within the FCC's range of reasonableness for contribution level

(id. at 22-23). Similarly, Verizon indicates that the margins for measured local usage rates over their direct cost and resulting overhead contribution are not unreasonable compared to those found to be reasonable by the FCC (id. at 23). Furthermore, Verizon argues that since the Department has always applied business usage rates to payphone lines, there is no basis for the Department to depart from its longstanding policy regarding PAL usage rates that have been found just and reasonable (id.). As to NEPCC's claim that PAL and PASL rates are discriminatory, Verizon contends that its payphone services are not discriminatory since all payphone-service providers, including its own payphone-service provider, are subject to the same tariffed rates and charges (id. at 24).

B. Subscriber Line Charges and Primary Interexchange Carrier Charges

1. NEPCC

NEPCC states that, in addition to the monthly PAL line rate of $13.00, payphone providers also pay a monthly Subscriber Line Charge ("SLC") charge of $8.13 and Primary Interexchange Carrier ("PICC") charge of $4.38, adding up to a total payment of $25.41 per PAL per month (id. at 26). NEPCC argues that Verizon is engaged in double recovery of its PAL costs because a cost-based or fully-compensatory UNE link is only $14.98 (id.). NEPCC states that it is not asking the Department to exempt PAL subscribers from the payment of SLC and PICC charges but to take into consideration such monthly payments in setting PAL service rates (id. at 27). NEPCC claims that West Virginia Public Service Commission, faced with the same situation, required that SLC payment must be considered in setting PAL service rates (id. at 27). NEPCC states that competitive local exchange carriers ("CLECs") do not pay SLC and PICC charges on top of the full-compensatory UNE rates and that under the terms of § 276 and the FCC's payphone orders, PAL subscribers cannot be treated any differently (id. at 30).

2. Verizon

Verizon indicates that SLC and PICC are federal charges that apply to all payphone service providers, including Verizon's own payphone operations, on a nondiscriminatory basis and under the same rates, terms and conditions (Verizon Initial Brief at 17). Verizon argues that the Department should not eliminate the charges because the FCC is very clear that payphone services providers are to be treated as retail customers, not telecommunications carriers and, therefore, should be subject to all applicable business line charges (id. at 18). According to Verizon, contrary to NEPCC's claim, there is no double recovery since those charges recover interstate embedded costs, not intrastate embedded costs (id.). Verizon indicates that both the Michigan PSC and the Colorado Commission have rejected similar arguments by the payphone associations (id.)

IV. ANALYSIS & FINDINGS

A. Compliance with § 276 and FCC's New Services Test

The FCC, in its Reconsideration Order at ¶163, released November 8, 1996, required that LECs file tariffs for the basic payphone lines at the state level only, and that unbundled features and functions be tariffed at both state and federal levels and that the tariffs for these services be (1) cost-based; (2) nondiscriminatory; (3) consistent with § 276;[(5)]

and (4) consistent with the FCC's Computer III tariffing guidelines, including the new services test.[(6)]

Both Verizon and NEPCC agree that the Company's payphone rates should be consistent with § 276 and the FCC's Payphone Orders. However, the two differ on the interpretation of the FCC's Payphone Orders with regard to the meaning of the FCC's requirement that rates should be cost-based. NEPCC claims that Verizon's PAL rates are not cost-based because: (1) PAL rates are not based on a PAL-specific cost study, and (2) Verizon made no demonstrations of the reasonableness of the cost-to-rate ratio analysis of its overhead cost.

First, we address the issue of whether PAL rates should be based on a PAL-specific cost study. In previous Department proceedings, payphone service providers have recommended that the Department establish a separate class for PAL service. For example, in New England Telephone and Telegraph Company, D.P.U. 92-100, at 272 (1992), the Department rejected the payphone service providers' argument that PAL rates are not cost-based only because we found no evidence that the cost of services provided by the Company to payphone services providers was different from the costs to serve other business customers. The Department's finding, however, in no way implied that the cost of payphone services were the same as the costs to serve other business customers, as alleged by Verizon. To the contrary, even after finding no evidence on which to consider payphone services separately, the Department, recognizing that payphone services providers are competitors of Verizon, encouraged the Company to consider if it is appropriate to establish a separate class for payphone service providers in the future. Id. at 272-273.

Despite the Company's lack of interest in establishing this separate class of service, FCC regulations now require that payphone rates be cost-based, consistent with § 276 and the FCC's Computer III tariffing guidelines, including the new services test. We agree with NEPCC that the current basic payphone access line rate is not payphone-specific, and is, therefore, not in compliance with the FCC's requirement that payphone rates be cost-based. In Local Competition, D.P.U. 94-185, at 15 (1996), the Department found, inter alia, that total service long-run incremental cost ("TSLRIC") is the appropriate standard for determining the prices of Verizon monopoly/essential services. Accordingly, the Department directs Verizon to file a comprehensive TSLRIC study, complete with supporting documentation, for basic payphone access lines and a cost-to-rate ratio analysis of its overhead costs, within 60 days of the date of this Order.

Moreover, we direct the Company to submit the TSLRIC study complete with supporting documentation for payphone features and functions. Verizon provided no demonstration of the reasonableness of the overhead cost for payphone features and functions. Since we have directed the Company to supply the Department with a comprehensive TSLRIC study, it may not justify overhead loading for payphone features and functions by reference to the overhead loading on other tariffed services such as other business services.

Next, we address the issue of whether the FCC payphone standard applies to local usage rates, as NEPCC contends. The FCC, in In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, DA 97-678, released on April 4, 1997, clarified and granted limited waiver of the Commission's tariffing requirements for unbundled features and functions. The FCC stated that "we do not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features. In addition, we clarify here that payphone-specific, network-based features and functions must be federally tariffed now only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to its payphone operations or to others . . . ." Id. at ¶18. While we agree with NEPCC that local usage is not an optional feature or function and that a payphone cannot make use of a payphone line unless it also pays usage, none of the FCC's payphone orders indicate that the FCC intended that usage be included as part of a payphone line or an unbundled payphone feature subject to the FCC's new services test requirement. We disagree with NEPCC's interpretation of FCC's Common Carrier Bureau letter to the Deputy Attorney General of New Jersey that the Commission confirmed that its payphone standards apply to the local usage component of the PAL services. To the contrary, the letter states that "any payphone service rate, flat or usage-based, must be justified by cost support materials as prescribed in 47 C.F.R. § 61.49(g), and must satisfy the price caps new services test" (NEPCC Initial Brief at 25-26; RR-DTE-3, October 7, 1999 Supplement). We believe the letter's use of the term "payphone service rate" is meant to distinguish payphone-specific rates from non-payphone-specific rates. Verizon's local usage rate is not a payphone-specific rate because it applies to all business exchange services. We agree with Verizon that if it had structured its usage rates differently for payphones than for other services, then those rates would be payphone-specific and the FCC's new services test would apply. The fact remains that Verizon has not structured its local usage rate in such a way as to have a separate local usage charge for payphone services. Therefore, we conclude that the FCC payphone standard does not apply to local usage rates.

Finally, we address NEPCC's claim that Verizon's PAL and PASL rates are discriminatory. NEPCC claims that since Verizon's rates are not cost-based, they undermine the non-discriminatory requirement of the FCC's four-part standard. Not withstanding our directive above that Verizon develop payphone-specific rates, since PAL and PASL services are available to all payphone service providers on a tariffed basis, we find no evidence that Verizon's PAL and PASL rates discriminate against NEPCC.

B. Subscriber Line Charges and Primary Interexchange Carrier Charges

The SLC and PICC are federal charges that are designed to recover common line costs.[(7)] These federal charges are designed to recover the residual portion of the costs that are not recovered by the intrastate loop charge and other federal charges, such as Universal Service Fund costs.

Here again, the FCC has clearly stated that payphone services providers are to be treated as retail customers by LECs and not as telecommunications carriers. Report and Order at ¶ 147. While the PICC charge is a moot issue because of a recent FCC Order, the SLC is a federal charge that applies to all end users, including payphone services providers. Because payphone services providers are treated as end users and because end users in the state currently pay a SLC charge, payphone services providers should be treated similarly. However, in determining whether payphone charges are properly set to recover the TSLRIC of payphone service, the Department will include revenues that Verizon receives from the SLC.

V. ORDER

After due notice, hearing and consideration, it is

ORDERED: That Verizon-Massachusetts conduct a comprehensive TSLRIC study, complete with supporting documentation for basic payphone access lines and a cost-to-rate ratio analysis of its overhead costs; and it is

FURTHER ORDERED: That Verizon-Massachusetts present said cost study to the Department within 60 days of the date of this Order; and it is

FURTHER ORDERED: That Verizon-Massachusetts and the New England Public Communications Council comply with any and all other directives contained in this Order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1.

Under FCC guidelines, the requirements for state payphone tariffs state that they must be "cost-based, consistent with Section 276, nondiscriminatory, and consistent with Computer III tariffing guidelines." In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 12 FCC Rcd 20, 997, 20, 998 (para. 2) (Com. Car. Bur. 1997). In an order issued on April 4, 1997, the FCC further clarified the "new services test" as set forth in the above payphone reclassification proceeding. The test requires that the rates for local exchange carrier ("LEC") payphone services be

based on the direct cost of the service and recover a reasonable portion of overhead costs.

2. Pursuant to 220 C.M.R. § 1.10(2), the presiding officer may allow for official notice to be taken of such matters as might be judicially noticed by the courts of the United States or of this Commonwealth. On March 2, 2000, NEPCC filed In the Matter of Wisconsin Public Service Commission Order Directing Filings, CCB/CPD No. 00-1, DA 00-347 (March 2, 2000) with the Department. On October 20, 2000, Verizon filed the findings of the New York Public Service Commission in Petition filed by the Independent Payphone Association of New York, Inc., that the Commission Modify New York Telephone Company's Wholesale Payphone Service Rates and Award Refunds, 99-C-1684 and Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996, 96-C-1174 (Order Approving Permanent Rates and Denying Petition for Rehearing) (October 12, 2000). Both parties have commented on these filings to supplement the record. In accordance with 220 C.M.R. § 1.10(2), the Department will take administrative notice of these filings.

3. Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies.

4. While rates are currently based on a statewide average, de-averaging would establish customer-specific rates based on class of service.

5. The Department has already addressed the issue of the Company's consistency with Section 276 in D.P.U. 97-18 and D.P.U. 97-67, in which Verizon removed its intrastate payphone subsidy as required by the Act.

6. Both Verizon and NEPCC agree that the basic requirement under the FCC's new services test is that the rates cover the direct cost of the service and provide a reasonable contribution toward the recovery of joint and common costs, which are referred to as overhead costs (Verizon Brief at 4-5; NEPCC Brief at 4).

7. On May 31, 2000, the FCC issued an order eliminating the residential and single line business PICC charge. The change became effective July 1, 2000. Sixth Report and Order in CC Docket 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45; Released May 31, 2000.